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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HUGO HERNAN ZELAYA,

Defendant and Appellant.

D070140

(Super. Ct. Nos. SCS187123 &
MIS003662)

APPEAL from an order of the Superior Court of San Diego County, Francis M.
Devaney, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Respondent.

This is an appeal from a postjudgment order denying a petition for dismissal of a
criminal action and a related petition for sealing and destruction of arrest records.

Appellant's appointed counsel has filed a brief summarizing the proceedings but urging

no grounds for reversal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We have reviewed the record and found no reversible error and therefore affirm the order.

BACKGROUND

Hugo Hernan Zelaya pleaded guilty in February 2005 to driving under the influence of alcohol and causing injury to another. (Veh. Code, § 23153, subd. (a).) At the sentencing hearing held in May 2005, Zelaya waived his right to future conduct credits pursuant to Penal Code section 4019 "even if [he were] remanded into jail"; and the trial court imposed a stipulated three-year prison sentence, suspended execution of the sentence, and granted him probation for five years. Zelaya violated the terms of probation in July 2008 by again driving under the influence of alcohol and was charged with that offense. (Veh. Code, § 23152, subd. (a).) After he pleaded guilty to that offense and admitted he had a prior driving under the influence conviction within the previous 10 years (*id.*, § 23550.5, subd. (a)), the trial court sentenced him to a stipulated three-year prison term in April 2010. The court also revoked the probation it had granted in the 2005 case, executed the previously suspended three-year prison term, and ordered it to run concurrently to the prison term imposed on the conviction of the July 2008 offense.

After sentencing, Zelaya sent several documents to the trial court concerning his convictions. In December 2010, he filed an "ex parte application for emergency immediate order amending sentencing abstract of judgement nunc pro tunc" (capitalization and typeface altered), by which he sought additional presentence conduct

credits under Penal Code section 4019, even though he had waived his right to such credits in May 2005. The court denied the application.

In August 2012, Zelaya requested the trial court order his attorney to turn over the 2005 case file. The court denied the request.

In January 2016, Zelaya filed a petition for dismissal of a "09/20/02 or later" conviction of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), on the grounds he had fulfilled the conditions of probation for the entire period thereof and should be granted relief in the interests of justice (Pen. Code, § 1203.4, subd. (a)(1)). At the same time, he also filed a petition for sealing and destruction of the arrest records pertaining to the 2002 conviction and requested the appointment of counsel in connection with the petition. (*Id.*, § 851.8.) With these petitions, Zelaya submitted no documents concerning the 2002 conviction. At the time he filed the petitions, he alleged he was being detained by immigration officials and was subject to a final deportation order because of his many arrests and convictions. On March 8, 2016, the trial court denied the petitions, on the grounds they did not state a prima facie case for relief, and, to the extent they could be treated as a petition for writ of habeas corpus, such a petition was untimely.

Zelaya timely appealed the March 8, 2016 order. (Pen. Code, §§ 851.8, subd. (p)(1) [order denying relief under § 851.8 is appealable to court of appeal in felony case], 1237, subd. (b) [postjudgment order "affecting the substantial rights of the party" is appealable]; *People v. Chandler* (1988) 203 Cal.App.3d 782, 787 [order denying relief under § 1203.4 is appealable].)

DISCUSSION

Zelaya's appellate counsel has filed a brief, pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth a statement of the case, urging no grounds for reversal of the order, and asking this court independently to review the record for error. Pursuant to *Anders*, counsel identified the following issues to assist this court in its search for reversible error:

- (1) Did the trial court err in denying Zelaya's 2010 credit correction motion?
- (2) Did the trial court err in denying Zelaya's 2012 request for his complete case file?
- (3) Did the trial court err in denying Zelaya's 2016 petition to dismiss the 2002 action and the related petition to seal and destroy arrest records?
- (4) Did the trial court err in denying Zelaya's 2016 request for counsel?
- (5) Did the trial court err in construing Zelaya's 2016 petitions as a petition for writ of habeas corpus and denying it because it was untimely and failed to state a prima facie case for relief?

After receiving the opening brief from appellate counsel, we informed Zelaya he could file a supplemental brief. He did not respond.

We have reviewed the record consistent with the requirements of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738; considered the issues listed by appointed counsel; and found no reasonably arguable grounds to reverse or to modify the order. Appointed counsel has represented Zelaya competently on this appeal.

DISPOSITION

The order is affirmed.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

IRION, J.